No. 6

In the Supreme Court of the United States

OCTOBER TERM, 1947

SILESIAN AMERICAN CORPORATION, DEBTOR, AND SILESIAN HOLDING COMPANY, PETITIONERS

v.

TOM C. CLARK, ATTORNEY GENERAL, AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

SUPPLEMENTAL BRIEF FOR THE RESPONDENT

In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 6

SILESIAN AMERICAN CORPORATION, DEBTOR, AND SILESIAN HOLDING COMPANY, PETITIONERS

v.

TOM C. CLARK, ATTORNEY GENERAL, AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

SUPPLEMENTAL BRIEF FOR THE RESPONDENT

The Supplemental Brief of Petitioners asserts that the Custodian's vesting order in this case did not purport to vest any interest of the Swiss Banks and that, therefore, the Custodian is not entitled to possession of the shares, but only of the equity interest of Non Ferrum and Giesche's Erben in them (pp. 2–3, 5, 6). This argument ignores the holding of the District Court (R. 49), from which the Swiss Banks did not appeal, that the Swiss Banks had established no interest in the shares. And in any event the argument rests upon a faulty premise.

768531—47

The petitioners, in effect, assume that the Custodian has merely vested the right, title, and interest of Non Ferrum and Giesche's Erben in the shares. The Custodian has frequently issued orders which in terms vest "all right, title, and interest" of named persons in described property. See e. g. *Clark* v. *Allen,* 331 U. S. 503; *Kahn* v. *Garvan,* 263 Fed. 909 (S. D. N. Y.). Here, however, he did not issue such a "right, title, and interest" order; he vested the shares themselves. His vesting order (R. 14–15) describes certain property—50,000 shares of preferred and 98,000 shares of common stock—and "vests *such property* in the Alien Property Custodian" (R. 15). [Italics supplied.] And if any doubt should exist as to his intention to vest the shares themselves, it is removed by the position which he has taken in this litigation.

The petitioners' argument is that this very explicit description by the Custodian of the thing vested is in some way qualified and cut down by the determination that the shares were owned by Non Ferrum and held for the benefit of Giesche's Erben. Nothing in these determinations purports to define the property vested, and we do not see how they could possibly be construed as altering the very explicit declaration of the order that the shares, and not merely some interest in them, were vested. Indeed, we think the Custodian's deter-

mination that Non Ferrum and Giesche's Erben were the nominal and beneficial owners, respectively, of the shares, if it has any relevance at all to the question of what the Custodian vested, must be read as a determination that on the facts before the Custodian no other interest in the shares was shown to exist. If at some future time the Swiss Banks can show that that determination was erroneous, it may be that the Custodian would, upon proper application to him under Section 32 of the Act, make an administrative return of any interest which the Swiss Banks could establish. And those Banks would have the undoubted right to attempt to establish their interest in an appropriate judicial proceeding brought after the shares had come into the Custodian's hands. But we do not see how any such error in the Custodian's determination, assuming that it can be shown to exist, could warrant a reading of his vesting order as effective to vest less than the entire shares.

The petitioners' argument amounts in reality to a contention that if, at any time after a vesting order has been issued, someone not specifically referred to in that order asserts an interest in the property vested, the vesting order becomes ineffective as to that asserted interest and the Custodian can take no action to enforce it until he makes a new determination and issues a new order saying, in effect, that he meant what he said in his original

order. We think that the Act plainly does not contemplate such a dilatory procedure. Section 5 (b) calls for an initial determination that property should be vested, but it contemplates that once that initial determination has been made the property shall forthwith be turned over to the Custodian. It is enough that the Custodian has acted, by vesting the described shares and requiring the delivery of certificates to him, and that adequate administrative and judicial remedies are available in case any property or interest therein was improperly vested, or in case it is determined that the national interest does not require its retention. It is well settled that the enforcement of a vesting order according to its terms cannot be delayed by interposition of issues as to the correctness of the administrative determinations which led to its issuance. As Judge Learned Hand said in the court below (R. 68–9):

> The power of the United States peremptorily to reduce to its possession and apply to its use, at moments critical in its history, all property which lies within its power is not to be emasculated by the delays of private litigation; the peril may be overwhelming, the need imperative. It is enough that reparation will be available, where reparation is due; meanwhile the individual must comply with the immediate demand just as he must comply with the immensely more

grievous demand for the possible sacrifice of life and limb, when that too is called for.

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.

DAVID L. BAZELON,
Assistant Attorney General.

M. S. ISENBERGH,
Special Assistant to the Attorney General.

JAMES L. MORRISSON,
Attorney.

NOVEMBER, 1947.

U. S. GOVERNMENT PRINTING OFFICE: 1948